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Attorneys for ROBERT H. FABIAN
Receiver for PEOPLES TEMPLE
OF THE DISCIPLES OF CHRIST

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

PEOPLES TEMPLE OF THE DISCIPLES OF CHRIST, Petitioner, vs. THE ATTORNEY GENERAL OF CALIFORNIA, Respondent.	No. 746571 PETITION FOR ORDER GRANTING RECEIVER AUTHORITY TO COMPROMISE CLAIMS OF THE UNITED STATES Hearing Date: August 26,198 Time: 2:00 P.M. Department: Nine

ROBERT H. FABIAN, Receiver ("Receiver") for PEOPLES TEMPLE OF THE DISCIPLES OF CHRIST ("Peoples Temple"), hereby petitions the Court for an Order granting Receiver authority to settle certain claims of the United States to assets of the Peoples Temple Receivership on terms more fully described hereinafter. Petitioner represents to the court as follows:

1. Reference is made to this Court's Order signed on January 26, 1979, assuming jurisdiction of the winding up of Peoples Temple and to this Court's Order of February 1, 1979 specifying the powers and duties of Receiver in these proceedings, for findings regarding the petition of Peoples Temple for

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dissolution and winding up of its affairs, the appointment of Receiver and Receiver's general powers and duties. The provision of these Orders are incorporated herein by reference.

2. Reference is made to Section 1806(a) of the California Corporations Code which authorizes this Court to compromise claims against Peoples Temple.

3. On January 22, 1979 in United States v. Peoples Temple of the Disciples of Christ, et. al., No. C79-0126 SC, United States District Court, Northern District of California, the United States filed suit against Peoples Temple and its related entities to obtain reimbursement for certain costs incurred by the United States in the aftermath of the Jonestown tragedy of November 18, 1978. The United States claims a right to reimbursement on a priority basis primarily for the costs of transporting the Jonestown deceased from Guyana to Dover, Delaware. According to the Complaint allegations, the United States at the time of filing suit had incurred costs of $4,298,000, in the Jonestown operation and expected that additional costs would be incurred.

Reference is made to this Court's Order signed on February 1, 1979 authorizing Receiver to enter an appearance in the federal court action on behalf of Peoples Temple. Another named defendant, The Peoples Temple of the Disciples of Christ Church in Guyana ("the Guyana corporation") has also appeared in that action. The case involves complex issues of law and fact, and Receiver anticipates that the case will be lengthy, require substantial discovery, and that the defense of this suit will involve substantial costs to the receivership estate.

During the time that the case has been pending, there has been no formal discovery; however, as more fully set forth below Receiver and the United States have agreed, subject to the approval of this Court, on a proposed settlement, and the United States has provided Receiver with information in support of its claim.

4. Reference is made to this Court's Order filed April 26, 1979, approving a written agreement dated April 12, 1979 between Receiver and the United States in which both parties agreed to use best efforts to repatriate to this country, Peoples Temple assets thought to be located in foreign countries. The joint effort of Receiver and the United States has resulted in the repatriation of substantial Peoples Temple funds to the receivership estate.

Pursuant to the same April 12, 1979 written agreement, repatriated funds in an amount of $4,350,000.00, an amount approximately equal to the United States' asserted claim in the federal court action, has been deposited with the Clerk of the United States District Court for the Northern District of California and invested in an interest-bearing Certificate of Deposit which matures August 26, 1980. In accordance with the written agreement, the $4,350,000 deposit is being held as a source of payment of the claim of the United States in the event of a final judgment in favor of the United States, and the funds will not be released until that action is finally resolved.

5. Receiver has received from the Internal Revenue Service a report dated May 16, 1980 which recommends that the tax-exempt status of Peoples Temple under Section 501(c)(3) of the Internal

Revenue Code be revoked for the fiscal year ending July 1, 1976 and all subsequent years, on the ground that Peoples Temple was not operated exclusively for religious and charitable purposes. Specifically, the IRS charges that Peoples Temple:

(1) carried on illegal acts and acts contrary to public policy;

(2) distributed earnings for the personal benefit of Peoples Temple members; and

(3) supported candidates for public office.

Receiver has appealed the proposed revocation of the exemption. If Peoples Temple's exempt tax status is revoked, the IRS will require that Peoples Temple file tax returns which would then be audited by the IRS. In all likelihood the IRS would attempt to tax as income donations made to Peoples Temple and profits realized on sales of its real property. Receiver would oppose the imposition of income tax liability, which would result in extensive, lengthy and costly litigation. It is not possible at this time to estimate Peoples Temple's income tax liability, but to the extent that any tax liability is established, it would be increased substantially by interest expense.

6. Receiver has also learned that the Guyanese authorities, in the aftermath of the Jonestown tragedy, seized more than 1,000 Social Security checks and other evidences of debt at Jonestown, most of which were payable to now deceased persons and some of which were endorsed in blank and delivered to officials of one of the Peoples Temple entities in Guyana. The Guyanese authorities thereafter surrendered these instruments to the United States State Department. The amounts aggregate

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approximately $300,000. Receiver has made a formal demand upon the United States State Department for possession of these checks, indicating that either Peoples Temple or the heirs of the payees of the instruments are entitled to the proceeds thereof. Receiver has examined copies of these instruments.

7. The Justice Department and Receiver have had numerous discussions about the merits of the federal court action. The Justice Department has informed Receiver that the United States will rely on the "emergency assistance" doctrine embodied in Restatement of Restitution, Section 115 (1937), and recently applied in the case of United States v. Consolidated Edison Co. of New York, Inc., 580 F.2d 1122 (2d Cir. 1978).

Receiver's counsel have researched the legal merits of the United State' claim under the "emergency assistance" doctrine and under other legal theories which might be relied on by the United States. Receiver and his counsel have also analyzed the issues of fact pertinent to adjudication of the United States' claim. Without waiving the attorney-client or attorney work product privileges, Receiver will provide the Court for examination, in camera, the legal opinion of Receiver's counsel evaluating the United States' likelihood of success in establishing its claim in the federal court action.

8. In recent months, Receiver and the Justice Department have explored the possibilities of settling the federal court action through an overall resolution of all claims existing between the United States and Peoples Temple. As discussed above, these claims involve, in addition to the claim before the federal court, the IRS action to impose retroactively tax

liability on Peoples Temple, and Receiver's demand that the State Department return the approximately $300,000 in instruments either to Receiver or to the heirs of the deceased payees on the checks.

9. In recent discussions focusing on an overall settlement, the Justice Department has asserted that costs incurred in the Guyana operation are at a minimum the $4,298,000 amount demanded in the Complaint and that the United States would be seeking at least that amount at trial. However, the Justice Department solely for the purposes of settlement discussions and without prejudice to the right of the United States to claim the $4,298,000 at trial, has focused on a lower figure of $2.8 million. At the request of Receiver, the Justice Department has provided Receiver with numerous vouchers describing the kind and dollar amount of certain of the specific items of costs necessarily incurred in the Guyana operation, totalling in the aggregate $2,885,266.00. Receiver will provide the Court with these vouchers for in camera review. For example, items of cost relating to the aircraft, fuel, and manpower required to airlift the bodies to Dover, Delaware; the process of identifying the bodies; preparation of the bodies for burial; and the provision for caskets, are set forth in the vouchers.

10. Based on the legal opinion of Receiver's counsel, Receiver's evaluation of the United States' documentation of the costs of the Guyana operation, and on consideration of the substantial costs and delays for the receivership in (1) litigating the complex issues of law and fact presented by the anticipated lengthy federal court action, and (2) contesting in a lengthy

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proceeding the IRS effort to impose income tax liability, Receiver is of the opinion that it is in the best interests of the receivership estate to compromise the United States' claim in the federal court action on the following terms, which terms the Justice Department informs Receiver are acceptable to the United States:

A. Receiver denies any and all liability of Receiver, Peoples Temple and the Guyana Corporation in regard to the United States' claim in the federal court action, and denies any and all liability of Receiver and Peoples Temple for any tax liability, past or present. For purposes of settlement, however, Receiver agrees to pay to the United States $2,100,000 on a priority basis out of the funds deposited for investment with the federal court. With respect to the issue of priority, 31 U.S.C. §§191 and 192 provide in pertinent part:

> "Whenever any person indebted to the United States is insolvent. . .the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, . . . , as to cases in which an act of bankruptcy is committed. The priority established under this section does not apply, however, in a case under Title 11." (Section 191)

> "Except with respect to a trustee acting in accordance with the provisions of Title 11, every executor, administrator or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate for whom or for which he acts before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate to the extent of such payments for the debts so due to the United States, or for so much thereof as remain due and unpaid." (Section 192)

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B. The United States dismisses with prejudice the federal court action against Receiver, Peoples Temple, the Guyana corporation, and all other named defendants. The United States executes a complete release of any and all claims of the United States against Receiver, Peoples Temple and the Guyana corporation arising out of the United States' Guyana operation.

C. The United States further releases the Receivership and Peoples Temple for present and past income tax liability, if any.

D. With respect to the evidences of debt recovered in Guyana described in paragraph 6 hereof, the United States and Receiver will jointly determine and select:

(a) Those instruments which (i) disclose on their face or by special endorsement that they represent assets of the Receivership, and (ii) those instruments that are postal or other money orders, traveler's checks and other similar instruments which have been endorsed or countersigned by the purchasers thereof without completing the names of the payees. These 200 instruments, totalling in the aggregate approximately $60,000, will be delivered to Receiver and their proceeds administered in the Receivership.

(b) Those instruments which represent obligations of the United States Government and which are unendorsed by the payees. These 85 instruments, totalling in the aggregate approximately $18,000, will be retained by the United States and the proceeds disposed of according to law.

(c) Those instruments which represent obligations of the United States and which were endorsed in blank by the payees

thereof. These 941 instruments, totalling in the aggregate approximately $198,000, will be delivered to Receiver for collection and administration in the Receivership, the United States agreeing to honor its obligations thereunder.

11. Receiver requests an Order granting him authority (1) to enter into a settlement with the United States on the above terms; (2) to compromise the claims of the United States on the above terms; and (3) to pay to the United States $2,100,000 on a priority basis out of the $4,350,000 in funds deposited with the federal court and invested in the above-mentioned Certificate of Deposit. The Order would direct that payment be made upon order of the federal court on or after August 26, 1980, the date when the Certificate of Deposit matures, and would direct that the balance of the funds deposited with the federal court be released upon order of the federal court, for disposition in this Receivership proceeding.

WHEREFORE, Receiver respectfully requests that an order be entered in the form embodied in Exhibit "A" to this Petition.

Dated: August 11, 1980

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By Miles A. Cobb

Miles A. Cobb

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THE DISCIPLES OF CHRIST

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

PEOPLES TEMPLE OF THE DISCIPLES OF CHRIST, Petitioner, vs. THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, Respondent.	No. 746571 ORDER GRANTING RECEIVER AUTHORITY TO COMPROMISE CLAIMS OF THE UNITED STATES

On the 26th day of August, 1980, the verified Petition of ROBERT H. FABIAN, Receiver ("Receiver") for PEOPLES TEMPLE OF THE DISCIPLES OF CHRIST ("Peoples Temple"), for an order granting Receiver authority to compromise claims of the United States came on for hearing before the Court. Upon consideration of the verified Petition and all other matters brought to the attention of the Court at the hearing, and

GOOD CAUSE APPEARING THEREFOR,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

That Receiver is granted authority to compromise the claims of the United States to assets of the Peoples Temple Receivership

EXHIBIT A

and to enter into a settlement agreement with the United States on the following terms:

1. Receiver pays to the United States on a priority basis $2,100,000 out of the $4,350,000 in funds deposited with the Clerk of the United States District Court for the Northern District of California and invested in a certain Certificate of Deposit which matures August 26, 1980. Upon obtaining an appropriate Order from the United States District Court for the Northern District of California, Receiver shall make payment to the United States on or after August 26, 1980, and upon further appropriate Order of the United States District Court for the Northern District of California, Receiver shall obtain the release of the balance of the funds deposited with the Clerk of the federal court after payment to the United States, to be released for disposition in this Receivership proceeding.

2. The United States dismisses with prejudice the action entitled United States vs. Peoples Temple of the Disciples of Christ, et al., No. C79-0126 SC, United States District Court, Northern District of California, against Receiver, Peoples Temple, the Guyana corporation, and all other named defendants. The United States executes a complete release of any and all claims of the United States against Receiver, Peoples Temple, and the Guyana corporation arising out of the United States' Guyana operation.

3. The United States executes a complete release of any and all claims of the United States against Receiver and Peoples Temple for present and past income tax liability, if any.

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4. Receiver and the United States jointly determine and select:

(a) Those instruments which (i) disclose on their face or by special endorsement that they represent assets of the Receivership, and (ii) those instruments that are postal or other money orders, traveler's checks and other similar instruments which have been endorsed or countersigned by the purchasers thereof without completing the names of the payees. These will be delivered to Receiver and their proceeds administered in the Receivership.

(b) Those instruments which represent obligations of the United States Government and which are unendorsed by the payees. These will be retained by the United States and the proceeds disposed of according to law.

(c) Those instruments which represent obligations of the United States and which were endorsed in blank by the payees thereof. These will be delivered to Receiver for collection and administration in the Receivership, the United States agreeing to honor its obligations thereunder.

DATED: August ___, 1980

IRA A. BROWN, JR.
Judge of the Superior Court

VERIFICATION

I, ROBERT H. FABIAN, say:

I am the duly appointed Receiver for PEOPLES TEMPLE OF THE DISCIPLES OF CHRIST, the Petitioner in the foregoing Petition For An Order Granting Receiver Authority To Compromise Claims of the United States; that I have read the Petition and know the contents thereof; the same is true of my own knowledge except as to those matters therein stated on information and belief, and as to those matters I believe them to be true.

Executed this 11th day of August, 1980, at San Francisco, California.

Robert H. Fabian

ROBERT H. FABIAN
Receiver for PEOPLES TEMPLE
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